# EXHIBIT 6 part 1 of 4

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Return and Supporting Points and Authorities

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- 3. CDCR has a process for validating inmates as prison gang members and associates. (See Cal. Code Regs., tit. 15, § 3378.) The initial validation of an inmate as a gang member or an associate requires at least three independent source items indicative of actual membership in, or association with validated gang members or associates, respectively. (*Id.* at § 3378, subd. (c).) The source items may be based upon self-admission, tattoos and symbols, written material, photographs, staff information, information from other agencies, association with other known gang affiliates, informants, commitment offense, information contained in probation reports, receiving visits from known gang "runners" or affiliates, and communications evidencing gang affiliation or debriefing reports. (*Id.* at § 3378, subd. (c)(8); see also *Madrid v. Gomez* (1995) 889 F.Supp. 1146, 1277 [expressing approval for the regulatory criteria].) A gang member is an immate who has been accepted into membership by the gang, while a prison gang associate is defined as an inmate who is involved periodically or regularly with either members or associates of a gang. (*Id.* at § 3378, subd. (c)(3)-(4).)
- 4. A validated gang member or associate is considered a threat to institutional safety and security. (Cal. Code Regs., tit. 15, § 3341.5, subd. (c)(2)(A)(2).) Inmates may be placed in administrative segregation or in the Security Housing Unit (SHU) when it is determined that their presence in the general population poses a threat to institutional safety and security. (*Id.* at § 3335.) An inmate who is validated as either a gang member or associate will be given an indeterminate SHU term. (*Id.* at § 3341.5, subd. (c)(2)(A).)
- 5. The indeterminate SHU term is not irrevocable; the inmate may be considered for release from SHU after he is verified as a "gang dropout" through a debriefing process. (*Id.* at §§ 3341.5, subd. (c)(4), 3378, subd. (c)(5).) In addition, prison regulations provide for regular reviews of an inmate's validated gang status. An inmate assigned to the SHU for an indeterminate term is reviewed by a classification committee every 180 days for consideration for release to the general population. (*Id.* at § 3341.5, subd. (c)(2)(A)(1).) In addition, the inmate's status is reviewed annually by the unit classification committee. (*Id.* at § 3376, subd. (d)(2).) If during the course of its reviews, the committee determines that there are any questions about the inmate's validated gang status, the committee can refer the inmate to the Institution Gang

Investigation Unit (IGI), the Law Enforcement Investigation Unit (LEIU), the Special Services Unit (SSU), which is the field office for the LEIU, or the Departmental Review Board (DRB) for a review. (See, e.g., Cal. Code Regs., tit. 15, § 3341.5, subd. (c)(5); § 3376, subd. (d)(2)(D).) Finally, prison regulations provide that an inmate housed in the SHU because of his gang status may be reviewed and considered for "inactive status" when he has not been identified as having been involved in any gang activity for six years. (*Id.* at § 3378, subd. (e).)

- 6. Acuna had been validated as an EME associate of the Mexican Mafia in the past, but he was later found to be "inactive" and released from the SHU. (See generally Pet.; see also, e.g., Ex. B, CDC 128-B2, dated 10/05/95; Ex. B, CDC 128-G, dated 05/31/00 [DRB decision releasing Acuna from the SHU based on his inactive gang status].)
- 7. In December 2003, while Acuna was housed at California State Prison, Los Angeles County, an investigation of Acuna's gang status was initiated by the local institutional gang investigator after the IGI received new confidential information indicating that Acuna was currently involved in EME activity. As part of this investigation, Acuna was photographed and interviewed, and he was informed that the IGI would be submitting a validation package to the LEIU for his re-validation. Acuna was told that there were two confidential memoranda that implicated him as continuing to participate in gang activity. Acuna was given the opportunity to participate and discuss any issues concerning his validation, and he denied any current involvement with the gang. (Ex. C, General Chrono, dated 12/17/03; Ex. D, General Chrono, dated 12/18/03.)
- 8. An inmate who has been categorized as an inactive gang member or associate and who has been released from the SHU, may re-validated and returned to the SHU based upon one reliable source item that identifies the inmate as an active gang member or associate. (Cal. Code Regs., tit. 15, §§ 3341.5, subd. (c)(6), 3378, subd. (f)(1); see also Ex. E, Hawkes Decl., ¶ 12.)
- 9. A validation package was submitted by the IGI to the LEIU/SSU in January 2004, and on January 20, 2004, Acuna was re-validated as a member of the Mexican Mafia prison gang. 1/2

<sup>1.</sup> Although Acuna was apparently re-validated as a member, it appears that he should have been re-validated as an associated, since he had previously been validated as an associate, rather than

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- 12/12/03; Ex. Y, Confidential Memorandum dated 09/23/00, 2003; and Ex. Z, Confidential CDC
- 128B, dated 09/21/00, all of which were previously filed under seal, for in camera review

(Ex. F, CDC 128-B2, dated 01/20/04; see also Ex. X, Confidential Memorandum, dated

- pursuant to the Court's order of October 31, 2005. For the Court's convenience, copies of these
- three confidential exhibits are being resubmitted for filing under seal now.) 5
  - 10. After the validation package had been submitted and Acuna had been re-validated, but before Acuna had been transferred to the SHU, he was transferred to Calipatria State Prison. (See Pet., p. 7; see also Ex. G. Movement History, entry dated 03/01/04.)
  - 11. On March 5, 2004, Acuna was placed in administrative segregation based on his validated active gang status, pending review of his housing and program needs by the institution classification committee. (Ex. G, entry dated 03/05/04; Ex. H, CDC 114D, dated 03/05/04.)
  - 12. On March 11, 2004, Acuna appeared before an institution classification committee for his initial review, and the committee decided he should be retained in administrative segregation pending his transfer to the SHU. Acuna had notice of the hearing, and during the hearing, he had an opportunity to challenge the housing decision. However, he expressed no disagreement with the committee's decision, and he did not assert any challenge to his validated gang status; in fact, he asked no questions and made no comments during the hearing. (Ex. H; Ex. I, CDC 128G, dated 03/11/04.)
  - 13. Acuna's administrative segregation placement was reviewed periodically until his transfer to the PBSP SHU on November 17, 2004. Acuna attended each of these hearings, and he never disagreed with the committee's decisions or voiced any concern with respect to his validated gang status; indeed, he asked no questions and made no comments during any of these hearings. (See Ex. G, entry dated 11/17/04; Ex. J, CDC 128Gs, dated 04/22/04, 07/15/04, and 10/07/04.)

a member. This mistaken reference does not, however, undermine the decision to re-validate

Acuna's as an active gang affiliate. Moreover, whether validated as a member or as an associate, Acuna would have been subject to the indeterminate SHU assignment. (Cal. Code Regs., tit. 15,

§ 3341.5, subd. (c)(2)(A)(2).) Finally, the IGI recently recommended that Acuna be validated as an active EME associate, rather than as a member; LEIU's validation decision is still pending. (Ex. E,

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14. In the meantime, before he was transferred to the SHU, Acuna submitted an appeal,
which he dated March 11, 2004. In this appeal, Acuna requested that his gang validation be
rescinded for various reasons, including because he had not been provided with Confidential
Information Disclosure Forms, also known as CDC 1030s, for the confidential documents that
had been relied upon to validate him. (See Pet., Ex. C; see also Ex. K, Inmate Appeal, Local Log
No. CAL 04-545, pp. 1-3.)

- 15. The CDC 1030s are forms used to identify the reason or reasons why the confidential formation relied upon has been deemed reliable, and the forms disclose as much information as ossible without jeopardizing the safety and security of the institution. (See Cal. Code Regs., . 15, § 3321.)
- 16. After filing this appeal, on April 20, 2004, Acuna was given CDC 1030s for the three ocuments relied upon to validate him. (Ex. L, CDC 1030s, referencing the 12/23/03 and 9/23/03 memoranda and the 09/21/00 CDC 128B.)
- 17. In the meantime, Acuna apparently submitted three more appeals, this time challenging e sufficiency of the evidence described in each of the CDC Form 1030s. (See Pet., Ex. C; see so Ex. K, pp. 8-20.) These appeals were consolidated with his initial appeal and ultimately mied at the second level and again at the Director's Level because there was sufficient evidence warrant Acuna's re-validation. (See Pet., Ex. C, Supplemental Page; see also Ex. K, pp. 23-5.<sup>2/</sup>)
- 18. As a result of this habeas matter, the respondent is in the process of reviewing Acuna's atus as an active gang affiliate. During this review process, Acuna has been afforded the quisite due process. The decision is still pending. (See Ex. E, Hawkes Decl., ¶ 20-22.)

<sup>2.</sup> Acuna complains because the Director's Level Appeal Decision refers to him as both an associate and as a member. This confusion likely arises from the fact that Acuna had previously been validated as an associate and was subsequently validated as a member. The mistaken reference in the appeal response, however, does not undermine the validation decision itself or the Director's Level decision upholding the determination that Acuna was active with the gang. Moreover, this discrepancy is being addressed in the pending review.

<sup>3.</sup> Respondent will provide the Court and Acuna's counsel with a copy of the LEIU's decision, once it has been issued.

1	19. Acuna fails to state or establish any grounds for habeas corpus relief.
2	20. Except as expressly admitted in this return, respondent denies the allegations of the
3	petition, generally and specifically, and specifically denies that Acuna's rights have been
4	violated.
5	This return is based on these allegations and the attached exhibits and memorandum of
6	points and authorities, all of which are incorporated by reference. For the reasons stated in this
7	return, respondent respectfully submits that the order to show cause should be discharged, that
8	the petition should be denied, and that this action should be dismissed.
9	DATED: June 16, 2006
10	Respectfully submitted,
11	
12	BILL LOCKYER Attorney General of the State of California
13	JAMES M. HUMES
14	Chief Assistant Attorney General FRANCES T. GRUNDER
15	Senior Assistant Attorney General
16	JENNIFER A. NEILL Supervising Deputy Attorney General
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18	J. 12 12 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2

PAMELA B. HOOLEY Deputy Attorney General

Attorneys for Respondent

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### MEMORANDUM OF POINTS AND AUTHORITIES INTRODUCTION

In the past, Acuna had been validated as an EME associate, but he was later classified as an inactive EME associate. After CDCR received information that Acuna was currently involved with the gang again, he was re-validated as an active gang affiliate. Acuna's petition challenges that decision, claiming not only that the evidence was insufficient, but also that he was denied due process. Respondent respectfully submits that this petition should be denied.

This Court has already concluded that one of three confidential documents submitted in support of Acuna's re-validation provided reliable and detailed information about Acuna's gang activity. However, the Court mistakenly indicated that three sources are necessary. Unlike an initial validation decision, when an inactive gang member or associate is re-validated, only one reliable source is required. In this case the Court has already found that there is one reliable source. Therefore, any deficiencies with respect to the other two sources are irrelevant to the resolution of the petition.

It is true that Acuna did not receive confidential disclosure forms (CDC 1030s) before his validation package was submitted to the LEIU. However, he did discuss his validation with the IGI before the package was submitted. And he received his CDC 1030s before he was transferred to the SHU, so he had the opportunity to challenge the validation decision then. He did so by filing an administrative appeal that was ultimately denied because the evidence was sufficient to re-validate him.

Moreover, respondent respectfully submits that even if Acuna was denied due process by the delayed receipt of the CDC 1030s he is not entitled to relief where, as here, his validation would have followed inevitably. Finally, Acuna's gang status is being reviewed, and Acuna has been provided due process in connection with this review, obviating then need for habeas relief.

### ARGUMENT

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### THE PETITION SHOULD BE DENIED BECAUSE ONLY ONE ITEM IS NECESSARY FOR RE-VALIDATION.

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member or associate. (Cal. Code Regs., tit. 15, § 3378, subd. (c).)

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The SHU placement of an inmate who is a validated gang member or associate, and who refuses to disassociate himself from that unlawful conspiracy, furthers the legitimate penological purpose of maintaining safety and security of the prisons. (Madrid v. Gomez, supra, 889 F.Supp. at pp. 1274-1276, 1280.) A high-level security institution such as Pelican Bay State Prison (PBSP) has a particular need for such placement. (Turner v. Safley (1987) 482 U.S. 78-79, 89.) CDCR's regulations require three independent source items to validate an inmate as a gang

When a validated gang member or associate has not been active with the gang for a minimum of six years, CDCR will consider whether that inmate can be classified as inactive and safely released to the general population from the SHU. (See Cal. Code Regs., tit. 15, §§ 3341.5, subd. (c)(5); 3378, subd. (e); see also Ex. E, Hawkes Decl., ¶12.) However, if CDCR has "one reliable source item identifying the inmate as an active gang member or associate," then the inmate can be re-validated and returned to the SHU. (Cal. Code Regs., tit. 15, §§ 3341.5, subd. (c)(6) 3378 [emphasis added], subd. (f)(1) [emphasis added]; see also Ex. E, Hawkes Decl., ¶12.) Thus, unlike the requirements for an initial validation, a single item is sufficient to re-validate an inactive gang member or associate. (Ibid.) Thus, respondent respectfully submits that the Court erred when it asserted that three independent source items are needed in this case. (See Order, dated 02/14/06, at 2:1012.)

Instead only one item was necessary to re-validate Acuna. (Cal. Code Regs., §§ 3341.5, subd. (c)(6) 3378, subd. (f)(1).) Nonetheless, the IGI actually submitted three source items for consideration by the LEIU, and the LEIU ultimately accepted all three. (See Ex. C-D, F, X-Z.) This Court has already concluded that one of the three items (Exhibit Y) meets the criteria for validating an inmate's gang status because it includes reliable, detailed information about Acuna's gang activity. (Order, dated 02/14/06, at 2:8-10.) That document alone provides a

sufficient basis for Acuna's re-validation. Thus, the adequacy of the other two items is irrelevant to the resolution of this petition.

### THE DELAYED RECEIPT OF THE CDC FORM 1030s DOES NOT WARRANT HABEAS RELIEF.

Limited due process requirements apply to placing an inmate in administrative segregation. An informal evidentiary review is sufficient both for the decision that an inmate represents a security threat and the decision to confine an inmate to administrative segregation pending completion of an investigation into misconduct charges against him. (*Hewitt v. Helms* (1983) 459 U.S. 460, 476.) The inmate must be given notice of the charges and opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation. (*Ibid.*)

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In this case, the evidence contradicts Acuna's claim that he was denied notice and an opportunity to challenge his validation before the validation package was submitted to the LEIU/SSU. (See Ex. C-D.) Instead, the evidence demonstrates that Acuna was given notice that two confidential memoranda were being used to document his continuing participation in gang activity. (See Ex. D.) In addition, contrary to the allegations in his petition, Acuna was, in fact, given the opportunity by the IGI to participate and discuss any issues concerning his validation. (*Ibid.*) The IGI documented this discussion, including Acuna's specific claims denying any current gang affiliation for consideration by the LEIU. (*Ibid.*)

It is true that Acuna apparently was not given the CDC 1030s before the validation package was sent to LEIU/SSU. (See Ex. L.) However, he did receive them on April 20, 2004, before his actual transfer to the SHU in November. (See Ex. L; Ex. G, entry dated 11/17/04.) And although he had the opportunity to assert challenges to his gang validation at multiple classification hearings, he never raised any questions about his validation during those hearings. (Ex. I-J.) If Acuna had challenged his validation during one of these committee hearings, the committee would have been obligated to refer any questionable gang identifications, notifications or new information to the IGI. (Cal. Code Regs., tit. 15, § 3378, subd. (c)(7); see also Ex. E,

Hawkes Decl., ¶ 19.) Thus, even though the CDC 1030s were not given to Acuna, he had notice and an opportunity to challenge his validation. Therefore he was afforded due process, and his petition should be denied.

Moreover, since the ultimate decision to re-validate Acuna was correct (based on Exhibit Y), and Acuna has not demonstrated any prejudice from the delayed presentation of the CDC 1030s, his petition should be denied. (In re LaCroix (1974) 12 Cal.3d 146, 154-155.) In LaCroix, a parolee was denied a timely pre-revocation hearing and sought his release. The California Supreme Court held that the denial of due process does not necessarily require a remedy unless a showing of actual prejudice is made. (Ibid.) Because LaCroix could not demonstrate any prejudice, his petition was denied. (*Ibid.*; see also *In re Shapiro* (1975) 14 Cal.3d 711, 718 [rejecting challenge to parole revocation because there was no evidence that the result would have been different].) Similarly, the Supreme Court refused to release an inmate whose parole had been revoked even though he had been denied due process because the inmate could not demonstrate any prejudice. (In re Caudillo (1980) 26 Cal.3d 623, 638 [failure to provide prerevocation hearing].) The Court found that it would be "pointless" to issue an order directing his release to afford him the requisite process since his immediate imprisonment would inevitably follow. (Id. at pp. 638-639; see also People v. Hayes (2006) 137 Cal. App. 4th 34, 41, 49-50 [rejecting challenge to Sexually Violent Predator commitment even though trial court erred because no prejudice demonstrated].)

This analysis is equally applicable here because Acuna has not demonstrated any prejudice.

Therefore, his petition should be denied.

Finally, Acuna has now been provided due process in connection with the pending review of his gang status. He was given notice of the source items being considered; he was able to provide his opinion as to each item; and his input is now being considered by the LEIU. Thus, there is no basis for habeas relief, and his petition should be denied.

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**CONCLUSION** 

Contrary to the allegations in his petition, Acuna was given notice and an opportunity to challenge his gang validation in connection with the 2004 decision finding him to be active with the Mexican Mafia. More importantly, the evidence of Acuna's continuing involvement with the Mexican Mafia is sufficient to justify his re-validation. And Acuna has now been afforded the requisite due process. Accordingly, his petition should be denied and this matter dismissed.

Dated: June 16, 2006

Respectfully submitted,

BILL LOCKYER Attorney General of the State of California

JAMES M. HUMES Chief Assistant Attorney General

FRANCES T. GRUNDER Senior Assistant Attorney General

JENNIFER A. NEILL Supervising Deputy Attorney General

P.B. Kny

PAMELA B. HOOLEY Deputy Attorney General Attorneys for Respondent

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# EXHIBITA

Form Adopted by the Judicial Council of California

Effective July 1, 1981

ABSTRACT OF JUDGMENT - COMMITMENT

FORM DSL 290

Pen.C. 1213.5.

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his form is prescribed pursuant to Penal Code §1213.5 to satisfy the requirements of Penal Code §1213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code §1770. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code §1203.C. Acopy of the sentencing proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code §1203.01. Attachments may be used but must be incorporated by reference.

Form Adopted by the Judicial Council of California Effective July 1, 1981

ABSTRACT OF JUDGMENT - COMMITMENT

ATTACHMENT FORM DSL 290-A

Pen. C. 1213.5

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Case 3:07-cy-	-05423-VRW Document 16-7 Filed 06/23/2008 Page 18 of 55	ි දිof
(was) or (w	was not)	(b)
ection 644 of the Penal Co	iode; and the defendant AS NOT a habitual criminal in accordance with Sub-	division (x)
of that Section.	(is) or (is not)	
of the Cour	ORDERED, ADJUDGED AND DECREED that the said defendant be punished to of the State of California for the term provided by law, and that he be remanded to entry of SANTA CIARA and by him delivered to the Director of Correlace hereinafter designated. CALIFORNIA MEdical FACILITY - VACAUITA	the Sheriff
•	shall be served in respect to one another as follows CONSECUTIVE  (Note whether concurrent or consecutive as t	a each countly
CT. DP VIOL. P.C. SE	EC. 209 (b) (KID NAPPING FOR ROBBERY) DEFT. SENT. TO STATE PRISON	V FOR THE
02 YEARS CONSECUTIVE ROBBERY) DEFT. SENT Q. VIOL. PG. SEC. 1202 TO CT. 02 STAYED IN	A Viol. P.C. SECTION 12022 & DEFT. SENT: TO STATE PRISON FOR the UE TO LIFE TERM CT. 02. CT. 03. VIOL. P.C. SEC. 209 Cb) CHIONAPPINT. TO STATE PRISON FOR THE TERM OF LIFE CONSECUTIVE TO CT. 02(a) DEFT. SENT. TO STATE PRISON FOR tHE TERM OF OLYEAR CONTROL INTEREST OF JUSTICE, CT. 04. VIOL. PC SEC. 209 Cb) CKIONA TO STATE PRISON FOR THE TERM OF LIFE CONSECUTIVE TO SEA COUNTS.	19 FOR  02 FOR  15ECUTIVE  10PING FOR
and in respect to any prior	r incomplete sentence (s) as follows: N/A	LANAS.
FOR a Viel. Pa SECT	TE whether concurrent or consecutive as to all incomplete sentences from other jurisdictions);  OM 13038(a) DEFT: SENT. TO STATE PLISON FOR THE TELM OF OLYEA  2 AND 3, STAYED PULSUANT TO SECTION 654 PC.	<u> </u>
	SEC. 667/1192. 7 DEFT. SENT. STATE PRISON FOR a TERM OF US YEAR	A5
CONSECUTIVE TO COU. TO STATE PRISON FOR	ANTS 2,3,4 (SINTIE 5 YEAR TERM). FOR A VIOL. PC SEC. 667.5(b) DES A TERM OF OIYEAR CONSECUTIVE TO COUNTS 2,3,4.  County of SANTA CIARA and to the Director of Corrections	FT. SEAT.
custody of the Director of at your earliest convenience.	judgment, this is to command you, the said Sheriff, to deliver the above-named defended to the corrections at California MECICAL FACILTY - VACAVILLE  2. Witness my hand and seal of said court	lant into the
ACTUAL LOCAL TIME		
504 days	this 28th day of APRIL 1987	رغ از در از در از در از
LOCAL CONDUCT CREdits:	ISLACE K YAMAKAWA	LClerk
252 days	by Calpo B celate CRALPH B. ULATE)	Deputy
TOTAL:	State of California,  County of SAMTA CIALA  State of California,	A STATE OF THE STA
NOTE:		
MOTION NEW TRIAL	I do hereby certify the foregoing to be a true and correct abstract of the judgment	
200000 -1-1-	and entered on the minutes of the Superior Court in the above entitled action as provi	
DENKED 3/9/87	and entered on the minutes of the Superior Court in the above entitled action as provi	ided by Penal
Motion to STRIKE PLIOR	and entered on the minutes of the Superior Court in the above entitled action as provi Code Section 1213.  Attest my hand and seal of the said Superior Court this 28th day of APRIL ERACE K. YAMALAWA, COUNTY CIERK BY Rales B. Wata Clash B. WATE)	ided by Penal
• • • • • • • • • • • • • • • • • • • •	and entered on the minutes of the Superior Court in the above entitled action as proving Code Section 1213.  Attest my hand and seal of the said Superior Court this 28th day of APLIL ERACE K. YAMAYAWA, COUNTY CIERK  BY Pales B. Wata Clarch B. WATE)  County Clerk and Ex-office Clerk of the Superior Court of the State of Carlon and Target and To	ided by Penal
Motion to STRIKE PLIOR	and entered on the minutes of the Superior Court in the above entitled action as provi Code Section 1213.  Attest my hand and seal of the said Superior Court this 28th day of APRIL ERACE K. YAMALAWA, COUNTY CIERK BY Rales B. Wata Clash B. WATE)	ided by Penal
Motion to STRIKE PLIOR CONVICTIONS - DENIED 3/9/87	and entered on the minutes of the Superior Court in the above entitled action as proving Code Section 1213.  Attest my hand and seal of the said Superior Court this 20th day of Affill ERACE K. YAMAYAWA, COUNTY CIERK  By Rales B. Watts Claich B: WATE)  County Clerk and Ex-officio Clerk of the Superior Court of the State of California in and to confly of SANTA. Claich.  The Honorable:	ided by Penal
Motion to STRIKE PLIOR CONVICTIONS - DENIEO 3/1/87 DEFT. Advised	and entered on the minutes of the Superior Court in the above entitled action as proving Code Section 1213.  Attest my hand and seal of the said Superior Court this 25th day of April ERACE K. YAMALAWA, COUNTY CIERK  By Pulled B. Wata Claiph B. WATE)  County Clerk and Ex-office Clerk of the Superior Court of the State of Carlondaria and and to confly of SANTA. Claip.	ided by Penal
Motion to STRIKE PLIOR CONVICTIONS - DENIEO 3/1/87 DEFT. Advised	and entered on the minutes of the Superior Court in the above entitled action as proving Code Section 1213.  Attest my hand and seal of the said Superior Court this 25th day of Affill ERACE K. YAMAYAWA, COUNTY CIERK  By Rales B. Watt Claich B: Wate County Clerk of the Superior Court of the State of Conformal and and to conform of Additional and and to conform of Additional and the Superior Court of the State of Conformal and the County of Additional and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the County of Additional and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of the State of Conformal and the Superior Court of	ided by Penal
Motion to STRIKE PLIOR CONVICTIONS - DENIEO 3/1/87 DEFT. Advised	and entered on the minutes of the Superior Court in the above entitled action as proving Code Section 1213.  Attest my hand and seal of the said Superior Court this 28th day of April ERACE K. YAMALAWA COUNTY CIERK  BY Rule B. Wata Claiph B. Wate Claiph B. Wate County Clerk of the Superior Court of the State of California in and to the State of the Superior Court of the State of California, in and for the Sauth Claip Sauth	ided by Penal
Motion to STRIKE PLIOR CONVICTIONS - DENIEO 3/1/87 DEFT. Advised	and entered on the minutes of the Superior Court in the above entitled action as proving Code Section 1213.  Attest my hand and seal of the said Superior Court this. 2041. day of April. ERACE K. YAMALAWA, COUNTY CIERK  BY Rais B. Wata Claiph B: (WATE)  County Clerk and Ex-officio Clerk of the Superior Court of the State of California and to the Superior Court of the Superior Court of the State of California, in and to the Superior Court of the State of California, in and to the Superior Court of the State of California, in and to the Superior Court of the State of California, in and to the State of California.	ided by Penal

# Case 3:07-cv-05425FVRWERIDECGALERI DE-7THE STEAT 56023/2008FORPHOR TO NO.

DATE: 28 APRIL 1987	Court convene	s at SAN JOSE	Courtroom	04	Ana
PRESENT: HONJACK_KOMAR	, JUDGE	RALPH B	ULATE	DEC	OTY CLERK
MOM DEDODMED	REPORTER	P. 01	NAVONOC	•	BAILIFF
TITLE: THE PEOPLE OF THE STATE CALIFORNIA, Plaint		COUNSEL PRESENT:	T. HANFORD	, DDA	C/41 32
vs. ARCADIO SERRANO ACUNA, Defend	ant.		R. DIXON,	ESQ.,	
NATURE OF PROCEEDINGS:  THE INDETERMINATE ABSTRACT	MINUTE OF JUDGM		ANT ARCADIO	SERRAN	0
ACUNA DATED 09, MARCH 1987 IS  DEFENDANTS SENTENCE TO STA	ORDERED AL	MENDED AS FOLL	ows:		
SECTION 12022(a) in COUNT 03  DEFENDANT SENTENCED TO STA  12022(a) IN COUNT 03 FOR THE T	TE PRISON	FOR A VIOLATI	ON OF PENAL	CODE S	ECTION
02, WITH SAID 12 MONTH SENTENCE	CE STAYED	IN THE INTERES	T OF JUSTIC	E.	
			Fol.	- B	
CC: DEPARTMENT OF CORRECTIONS					
LEGAL PROCESSING UNIT		•			
P.O. BOX 942883	,		•		•
SACRAMENTO, CA. 94283-0001	L'				
	, •	CF	ZIMINAL ,		
LAW AND MOTION MINUTES	BOOK_	·		03259	
XXX MINUYE ORDER TRIAL MINUTES	PAGE_	•		RIL 198	7

EXHIBIT B

NO. C-4316 Case 3:07-cv-05423-VRW Documento-Activitied 06/23/2008 Page 20-62-65 (Rev. 2/96)

Custody: MAX AS signment: Comments: DEPARTMENTAL REVIEW BOARD

Location: PBSP / SHU Gang: INACTIVE EME CS: 81 Prior DRB: NO Enemy: YES

MEPD: 5-17-12

Restitution: NOT APPLICABLE

REASON FOR REFERRAL: This case was referred to DRB pursuant to California Code of Regulations (CCR), Title 15, Section 3378 (d)(e) whereas "... an inmate housed in a Security Housing Unit (SHU) as a gang member or associate may be considered for review of inactive status by DRB when the inmate has not been identified as having been involved in gang activity for a minimum of six years. The Assistant Director, LEIU, or designee shall approve verification of an inmate's inactive status...". This case has been validated by LEIU staff as meeting the inactive criteria, and requires a DRB review to evaluate the inmate's inactive status and alternative placement options, if approved by DRB action. The following case factors are noted:

1. On 10-5-98, Inmate Acuna was validated as an associate of the EME per the CDC-128-B-2 process (copy attached). The validation documents used to validate Inmate Acuna have been included with the DRB referral documents. A review of these documents indicates that Inmate Acuna did not have a significant EME role.

2. On 1-31-00, the Inactive Gang Task Force completed an investigation relative to Inmate Acuna's gang involvement (copy of CDC-128-B attached). This investigation determined that Inmate Acuna qualified for a potential "inactive validation" via LEIU. This document also notes the last source document related to gang activity is dated 8-31-90.

3. A CDC-128-B-2- dated 2-07-00, was prepared by LEIU staff and documents that Acuna has been determined to

be an "inactive" EME associate and therefore, meets the criteria for a DRB referral / review.

The inmate has requested placement at PBSP-IV "general population". The institution has recommended that DRB approve a transfer to either CCI-IV or SVSP-IV general population.

CIRCUMSTANCES: Inmate Acuna was received into CDC on 3-11-87 as a PV/WNT from Santa Clara County for Kidnap for Robbery (3 counts). He was sentenced to three Life terms plus eight years. He has an extensive criminal record dating to 1978. He has not appeared to be a management concern during this current CDC term. His last disciplinary action was in 1995 for Talking in the Library. Inmate Acuna was also found to be the victim of a stabbing assault in 1990.

Date: 5-31-00

Classification: DRB ACTION

Inst.: PBSP

NO. C-43165

NAME: ACUNA

CDC-128-G (Rev. 2/96)

Custody: MAX AS Assignment:
Comments: DEPARTMENTAL REVIEW BOARD

INSTITUTION STAFF RECOMMENDATION: Approve transfer to either PBSP-IV or CCI-IV general population.

CLASSIFICATION SERVICES RECOMMENDATION: CSU notes all case factors and the recent "inactive" gang validation. Additionally, the inmate has maintained a satisfactory program and has not been a management concern. The LEIU Investigation results warrant this review and substantiate a potential placement of Inmate Acuna in a general population facility for a twelve-month period of observation. Therefore, CSU recommends: 1. Approve a transfer to SVSP-IV for a twelve-month period of observation. 2. The PBSP C&PR to facilitate this transfer within 14 days after receiving this action. 3. The PBSP C&PR to complete the CDC-840 with applicable transfer information / administrative determinates prior to the inmate's transfer. 4. The inmate to be advised that any signs of gang activity (one reliable source) will result in a removal from the general population. 5. After a twelve-month period of observation has been completed, the inmate is to be reviewed by a Classification Committee to ensure that his placement is consistent with his classification score and case factors.

DRB ACTION OF 5-31-00: DRB reviewed Inmate Acuna's case, in person, on this date at PBSP. Acuna was permitted to discuss his case with the DRB members. Inmate Acuna acknowledged the reason for his DRB appearance and understood the "inactive gang" process. DRB noted all case factors relative to meeting the "inactive gang" criteria, including the inmate's positive behavior and lack of any documented gang activity. DRB discussed all program expectations with Inmate Acuna, who claimed to understand all functions of this DRB review. Acuna stated "I just want to get a date..." DRB noted the following factors, staff comments and discussion points:

1. The Tier Officer assigned to Inmate Acuna's "POD" was asked by DRB members about his behavior, compliance with directions, attitude toward staff and ability to program with members of rival gangs. disruptive groups in a

Document 16-7 Filed 06/23/2008 Page 230 (Rev. 2/96) Case 3:07-cv-05423-VRW

NO. C-43165

assignment: Custody: MAX AS Comments: DEPARTMENTAL REVIEW BOARD

positive manner. The Officer expressed positive comments about Acuna and indicated he was not a problem inmate. The Officer felt Acuna should be able to program with inmates of opposing factions.

2. Inmate Acuna indicated that if placed in a general population setting / integrated yard, he would be able to program with inmates from rival groups. 3. Acuna also understood that DRB may approve Double-Celling upon his reception at a general population

institution, and he claimed he would have no problems housing with another inmate.

4. Acuna claimed he would not involve himself in future gang activity and acknowledged the consequences, should

he become involved in any type of future gang activity / association. After a review of all case factor and noting the above comments, DRB elected to grant the inmate's release from Indeterminate SHU with placement at CCI-IV for 180 design housing. The following DRB actions were also approved: 1. Retain CLO-A custody for a period of twelve months, at which time, the institution is to evaluate the inmate's behavior and relevant case factors to determine his eligibility for a less restrictive custody. 2. The CCI-IGI is to closely monitor the inmate's behavior and activity while housed at CCI. 3. Double-Cell housing is approved upon his reception at CCI. 4. The PBSP C&PR to facilitate this transfer with CSU staff within 14 days after receiving this action. The C&PR is to also complete the CDC-840 with applicable information / administrative determinates to include "INA" prior to the inmate's transfer. 5. Although DRB will not maintain future transfer control over this case, it is requested by DRB that if Inmate Acuna is identified as being involved in any future gang activity, which would again subject him to an Indeterminate SHU placement, that the DRB coordinator be advised in order to monitor the success of this program. 6. Case to be reviewed in twelve months by a Classification Committee to ensure that the inmate's placement is consistent with his Classification Score / case factors.

> RETAIN DRB TRANSFER CONTROL: YES \_\_\_\_ NO \_X\_ Inst.: PBSP

Date: 5-31-00

Classification: DRB ACTION NAME: ACUNA

CDC-128-G (Rev. 2/96)

NO. C-43165

Assignment:

Custody: MAX AS Comments: DEPARTMENTAL REVIEW BOARD

MEMBERS:

D. TRISTAN, Deputy Director

Institutions Division

K.W. PRUNTY, Regional Administrator-South

M. KALVELAGE, Chief (A)

Institution Operations, Institutions Division

D. LANKFORD, Classification Staff Representative, Classification Services Unit

B. PARRY, Assistant Director, Law Enforcement and Investigation Unit

J. DIGGS, Facility Captain, Classification Services Unit

M. Kalulace M. KALVELAGE, Chief (A)

Institution Operations, Institutions Division

TRISTAN, Deputy Director

Institutions Division

Date: 5-31-00

Classification: DRB ACTION

Inst.: PBSP

( (M ) AN POT ( MAD)		06 304
INMATE'S NAME: A CUNA	Arnadio	CDC NUMBER: (43)
On 21 Nov 90 a gang va	ARCACIO  Ilidation package regarding subject was received from Institution (	Gang Investigator A.L. B.#//
· Felcom	ion requirements: There (3) conficiential m	
THE INDICATE HEAT OF THE TANKE	-89 Arod 8-31-90+	107723-05-38-705-70-
10-11-80, 1-20	-0 / Aloca 8-3/-70 ·	• ,
The following theres should ment for	TOTAL MUSICAL SET TO THE SET OF T	validation arenovation of these
		,
· · · · · · · · · · · · · · · · · · ·		
05 Oct 95	CANG VALIDATION WHICH CONTINUED ON HENDER)	General Ceiro
•	ACTION OF REVIEWER	
ursuant to the validation requirement	s established in 15 CCR Section 3378 Acurs, Archae	ATE'S NAME)
Ţ.	( V) VALIDATED ( ) REJECTED	_
s a member/associate/thoponi/enfety-e	concern/delete of the MEXMAN MADIA	prison gang/disruptive gr
EVIEWER'S SIGNATURE ROBERT COBAUGH,		
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	LIEUTENANT TO CARLOS DATE:	5 Cot 95

Copy - Classification & Parole Representative/Parole Administrator I

Copy - Institutional Gang Investigator/Region Gang Coordinator

Copy - Law Enforcement Liaison Unit

Copy - Inmate/Parolee



### ACUNA, ARCADIO, SERRANO C-43165 AKA "CADIO"

CDC 128-B (REV. 4/74)

On Monday, January 17, 2000, an investigation was initiated on inmate **ACUNA**, **C-43165**, per the California code of Regulations, section 3378 (d) (e), regarding his (Active/In-Active) gang status.

ACUNA was validated on 11-29-90, as an associate of the Mexican Mafia prison gang.

The last source document showing activity is dated, 08-31-90.

During the investigation the following areas were reviewed:

CENTRAL FILE	01/17/00	I. Dominicci
ARCHIVES	N/A	N/A
LEIU/INTELL OPS	01-28-00	Agent D. Smith
CAL GANGS	01/17/00	Officer J. Bales
WSIN	01/17/00	Officer J. Bales
PAROLES, LEADS	N/A	N/A
LOCAL LAW ENFORCEMENT	01/19/00	Deputy S. Chapman

A review of the above areas revealed no gang activity with the last six years.

A search of ACUNA'S assigned cell (D-6207L) proved negative for gang activity.

The Offender Based Information System (OBIS) indicated **ACUNA** has been in Pelican Bay State Prison since 01/19/91.

Based on the above information it is recommended ACUNA, C-43165, be placed on In-Active status.

**ACUNA** was photographed, and an **In-Active** package is being submitted to the Law Enforcement & Investigations Unit for approval.

I. Dominicci

I.S.U. Gang Investigator In-Active Gang Task Force

Pelican Bay State Prison

DATE: 01/31/2000

GANG INFORMATION/IGI REVIEW / IN-ACTIVE STATUS

CDC 128-B

Case 3:07-cv-05423-	VRW Document 16	-7 Filed 06/23/2008	Page 25 of 55
STATE OF CALIFORNIA CDC 128-B-2 (5/95)	D6/20	)	DEPARTMENT OF CORRECTIONS
INMATE'S NAME: ACUNA, ARCADI	0	3	CDC NUMBER: C43165
On 02/04/00 a gang validation package reg	TO7 equirements: 128B DATED 01/3	FAL NUMBER OF ITEMS SU 31/00.	CRANDALL at PBSP.  UBMITTED FOR REVIEW: (1)  ATION REQUIREMENTS: (1)
The following items do not meet the valid TOT.	lation requirements and were/sha	all not be used as a basis for val	
Date: 02/07/00	GANG VALIDATION/R (CONTINUED ( LEIU/SS	ON REVERSE)	GENERAL CHRONO
Pursuant to the validation requirements est	•	78, ACUNA, ARCADIO is:	
as a inactive associate of the MEXICAN N	✓ VALIDATED  MAFIA prison gang.	REJECTED	
REVIEWER'S SIGNATURE S.C. WOHLWEND, Senior Special Agen	I. Cuphle	DAT	E: 02/07/00
DISTRIBUTION: Original - Central File Copy - Classification & Parole Represe Copy - Institutional Gang Investigator/ Copy - Law Enforcement Liaison Unit Copy - Inmate/Parolee	Region Gang Coordinator	r I	FEB 10 AM 8 :

State of California

Department of Corrections CDC 128-B (8-87)

NAME AND NUMBER

ACUNA, ARCADIO, SERRAN C43165 AKA "CADOI"

On Friday December 12, 2003, an investigation was initiated on Inmate Acuna, C43165, per the California Code of Regulations, Title 15, Section 3378 (d) regarding his (Active/In Active) gang status.

Acuna was validated as an associate of the Mexican Mafia prison gang on 11-29-90.

The last source document showing gang activity is dated 08-31-90.

The California State Prison Los Angeles County (CSP-LAC) Institutional Gang Investigator's Unit has received new Confidential Information dated September 23, 2003 and December 12, 2003, implicating and showing Acuna as being currently involved in associating and participating in gang activity for the Mexican Mafia (EME) at CSP-LAC.

Based on the information it is recommended Acuna, C43165, be placed on the Active Status.

Acuna was photographed, and an active package is being submitted to the Law Enforcement & Intelligence Unit, (LEIU).

GARCILAZO

Institutional Gang Investigator

CSP-Los Angeles County

Orig:C-FILE

Cc: Writer

Date: December 17, 2003,

GANG CHRONO

GENERAL CHRONO

State of California

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Department of Corrections CDC 128-B (8-87)

NAME AND NUMBER

ACUNA, ARCADIO, SERRANO, C43165

### INTERVIEW:

On Thursday December 18, 2003, the Institutional Gang Investigator (IGI) interviewed Inmate Acuna C43165, Validated Mexican Mafia Inactive per California Code Of Regulations Title 15, Section 3378 (f).(1). Acuna was informed that IGI would be submitting a validation package for revalidation with Prison Gang Mexican Mafia. Inmate Acuna was also informed that two confidential Memorandums were being used as new information implicating him as continuing to participate with gang activity. Inmate Acuna was given the opportunity to participate and discuss any issues concerning the validation. Acuna stated he has been clean for three years, you can review my Central File, you can talk to all supervisor's whom I have work for about my character. I don't associate with no prison gang members, associates, or anybody. I do my own program. I can't help if they (Young Southerner's) inmates look up to me. If anything I try to encourage these youngster to stay out of prison to go home and stay out of trouble. Inmate Acuna denied any current involvement with gang activity.

GARCILAZO

Institutional Gang Investigator CSP Los Angeles County

Inmate

Orig: C-File Cc: Writer

Date: December 18, 2003

GENERAL CHRONO

**EXHIBIT E** 

Document 16-7

Case 3:07-cv-05423-VRW

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Filed 06/23/2008

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- PBSP contains a Security Housing Unit (SHU) which houses inmates who, for 2. institutional safety and security reasons, must be separated from the general inmate population.
- Some of the inmates housed in the SHU are inmates who have been identified as being associated with, or members of, a prison gang. CDCR utilizes certain procedures for identifying and/or validating inmates with gang affiliations. Those criteria are contained in California Code of Regulations, title 15, section 3378.
- 4. The initial investigation to determine whether a particular inmate is a member or associate of a prison gang is performed by the Institution Gang Investigation Unit (IGI) at the institution where the inmate is housed.
- The IGI gathers the relevant information and when he or she has a sufficient basis for believing that the inmate is a member or associate of a prison gang, the IGI prepares a gang validation packet that consists of the relevant documentation, also known as the source items, supporting validation of the inmate as either a member or an associate.
- 6. Part of the validation packet includes photographs of the inmate, including photographs of his tattoos. The validation packet is discussed with the inmate before it is submitted to the LEIU for review. In the past, including at the time of Acuna's re-validation in January 2004, this discussion was generally undertaken at the time the inmate was photographed.
- In November 2004, the CDCR entered into a settlement agreement in the matter of Castillo v. Terhune, U.S. District Court, N.D. Cal., S.F. Div., Case No. C94-2847 MJJ JCS. In that agreement, the CDCR agreed to provide any inmate who is being considered for validation with 24-hour advance notice of the source items before the validation package is sent to the LEIU. The CDCR also agreed to record the inmate's opinion concerning each source item and to forward that opinion to the LEIU with the validation package. Those procedures are, however, prospective, and, therefore, they were not applicable at the time of Acuna's re-validation.
- If a validation is based on confidential information, a Confidential Disclosure Information Disclosure Form (CDC 1030) is prepared and issued to the inmate for each confidential document that is relied upon as a source item. This form identifies the reason or reasons why the confidential information is reliable and discloses as much information as

possible without jeopardizing the safety and security of the institution.

- 9. The LEIU reviews the validation packet to assure that the source items provide a sufficient basis for the inmate's validation as a gang member or associate. If the validation packet is accepted by the LEIU, the inmate is then considered a validated gang member or associate. The inmate is then provided with a validation document known as a CDC 128-B2. This document is prepared by the LEIU. It lists the source documents and identifies those documents that the LEIU accepted, as well as any documents that were rejected by the LEIU.
- 10. During the course of the investigation of an inmate's gang status, in order to maintain institutional safety and security, the inmate is generally transferred to administrative segregation, pending the completion of that investigation and review by the LEIU. The inmate has the right to administratively appeal that decision.
- 11. In addition, the placement of an inmate in administrative segregation is regularly reviewed during Institution Classification Committee and Unit Classification Committee hearings, during which the inmate may present any information to challenge or refute his placement. An inmate appears approximately once every six months before one of these committees for housing and program review. Additionally, prison regulations provide that an inmate receive at least 72 hours notice before one of these hearings take place. An inmate can waive notice and can waive his right to appear at the hearing. At the hearing, the inmate is informed of the information regarding his gang status, as supplied by Institutional Gang Investigator or LEIU. The inmate is afforded basic due process rights, including the right to present witnesses and documentary evidence and, when necessary, a staff assistant and/or investigative employee will be assigned. Following the hearing, the inmate is provided with a classification chrono (CDC 128G). A Classification Staff Representative (CSR) then reviews the committee's decisions and recommendations for placement.
- 12. An inmate who has been validated and as an active gang member or associate and placed in the SHU is eligible for review and placement on inactive status if the inmate has not been involved in gang activity for at least six years. However, that inmate may be re-validated if the inmate has been identified as being an active gang member or associate. Unlike the

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procedure for an initial validation, which requires three separate source items, only one reliable source item is necessary for an inactive gang member or associate to be re-validated as active, as provided in Title 15, section 3378, subdivision (f)(1).

- 13. I have reviewed the petition for writ of habeas corpus filed by inmate Acuna (C-43165), as well as his central file. Based on my review, I believe that there was sufficient evidence to re-validate Acuna as an active Mexican Mafia associate rather than as a member.
- 14. Although only one reliable source item was necessary to re-validate Acuna, three items were presented to the LEIU in the validation package submitted by the IGI in January 2004. I will refer to these three items as follows. Exhibit X is a confidential memorandum, dated 12/12/03. Exhibit Y is a confidential memorandum dated 09/23/03. Exhibit Z is a confidential CDC 128B, dated 09/21/00.
- 15. Based on my review of Exhibit Y, the confidential memorandum dated 09/23/03, it was properly relied upon to validate Acuna because it includes detailed, reliable information demonstrating that Acuna was currently involved in EME activity. The reliability of the confidential information in this document was established under Title 15, section 3321, subdivision (c)(3) because the source's information was self-incriminating. Because only one reliable source item is necessary to identify an inactive gang member or associate as being active, this confidential memorandum (Exhibit Y, the confidential memorandum dated 09/23/03) provided a sufficient basis to re-validate Acuna as an active EME member.
- 16. Therefore, Exhibit X, the confidential memorandum dated 12/12/03, and Exhibit Z, the confidential CDC 128B, dated 09/21/00, were not necessary for Acuna's re-validation.
- 17. On March 11, 2004, Acuna appeared before the Institution Classification Committee at Calipatria State Prison for his initial review and based on his status as a validated EME member, the committee recommended his retention in administrative segregation pending a transfer to the PBSP SHU. During the hearing, Acuna did not raise any objections to the committee's decision, the failure to provide him with the CDC 1030s before the validation packet was submitted to the LEIU, or the validation itself. Until this hearing, although Acuna had been in administrative segregation, no action had been taken to change his housing or his program based on his

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18. Acuna was ultimately transferred to the SHU at PBSP on November 17, 2004. Before he was transferred to the SHU, his placement in administrative segregation was reviewed again by an institution classification committee on April 24, 2004, July 15, 2004, and once more on October 07, 2004. Although Acuna attended each of these hearings, he never expressed any disagreement with the committee's decisions or his prospective placement in the SHU.

- 19. I understand that Acuna's petition claims that he was denied due process during his validation. His claims are based in part on the fact that he was not provided with CDC 1030s for the three documents in the validation packet until April 20, 2004, after that packet had been submitted to the LEIU. In my opinion, these CDC 1030s should have been provided to Acuna before the validation packet was submitted to LEIU in January 2004. However, they were provided to him before he was actually transferred to the SHU on November 17, 2004. Moreover, Acuna had the opportunity to present his views concerning his gang status before the validation packet was submitted to the LEIU when he was interviewed by the IGI at California State Prison, Los Angeles. In addition, Acuna could have expressed his disagreement with both his validation and his pending transfer to the SHU at any of the institution classification committee hearings he attended before his transfer to the SHU. If Acuna had asserted a challenge to the failure to provide him with the CDC 1030s, or the reliability of the confidential information at any of his committee appearances, the committee could have assessed his claims, and if appropriate, referred the matter to the IGI and/or the LEIU for evaluation and possible further investigation of his gang status. Under Title 15, section 3378(c)(7), the committee is obligated to refer any questionable gang identifications, notations or new information to the gang coordinator/investigator for investigation.
- 20. In any event, after the initiation of this litigation, the respondent agreed to review Acuna's entire central files to conduct a thorough review of Acuna's status as an active affiliate of the EME and to provide Acuna with an opportunity to address each item that may be considered by the LEIU for validation before the materials were forwarded to LEIU. As a result, on June 2, 2006, I provided Acuna with a memorandum documenting this agreement, together

with copies of CDC Form 1030s and copies of non-confidential information relevant to his gang affiliation. In that memorandum, I advised Acuna of the reasons for this review and the relevant procedures. Attachment 1 to my declaration are true and correct copies of my memorandum to Acuna, as well as the CDC Form 1030s and non-confidential documents I gave to him.

- 21. On June 5, 2006, Sergeant D. Barneburg, who is another member of the IGI, participated with me in an interview of Acuna, during which we discussed all the source items being considered for his validation as an active EME affiliate. In response, Acuna provided two handwritten memoranda. I also documented the opinions he offered, if any, concerning each source item on a general chrono dated June 5, 2006. Attachment 2 to my declaration includes true and correct copies of my memorandum and Acuna's two responses. For the Court's convenience, Attachment 3 to my declaration includes true and correct copies of the most recent CDC form 1030s that were provided to Acuna in connection with this review.
- 22. On June 6, 2006, I forwarded copies of my memorandum and Acuna's two response memoranda to the LEIU, with my recommendation that Acuna be validated as an active EME associate, rather than as a member. It is my understanding that LETU has not yet completed its review so LEIU has not yet decided whether to validate Acuna as an active gang affiliate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th of June, 2006, at Crescent City, California.

30109117,vipd

## ATTACHMENT 1

June 2 2006

### Mr. Acuna

Per agreement between the Attorney General's Office and your attorney, Mr. Mavris, we are going to review the gang-related documents in your Central File and provide you with an opportunity to:

1) Provide responses to be considered and evaluated by the validating authority

2) Provide information that may be important for the investigator to consider and explore before submitting documentation to the validating authority to have the correct facts.

Enclosed you will find CDC Forms 1030 disclosing confidential information from your C-File. You will also find copies of nonconfidential information. The collection of this information may be submitted to the validating authority for review and consideration. Some of the confidential information was previously disclosed, and copies of those forms are also being provided for your review. Some of the documents specifically mention gang activity or affiliation, while others are behaviors tied to gang activity or gang affiliates. It is the responsibility of the investigator to articulate ties to specific gang activity and affiliates when such is present.

On Monday, June 5, you will be interviewed by a representative of the Institutional and Investigations Unit regarding each of the documents. Your attendance at the interview is appreciated and the This will be the time to bring with you any information to address the sources discussed in the material decity provided to you. It is better if you address each item in your own handwriting, but the investigator is grepared to document your statements in his report should this be your preference. If you refuse to attend the interview, it will be noted that the opportunity was afforded to you, but you chose to waive your right to do so.

To be a validated prison garly member or associate, at least three independent source items are required. At least one of those sources must be a direct link to a member of the garly. To be considered an active associate or member, at least one source must address relevant activity within the last six years. Reports dated within the six year period that only refer to activity over six years old may be accepted for validation (three source rule), but not used to substantiate active status (six year rule). So there are two parts of this process being addressed: (1) validation; and (2) active status.

You are referred to the processes outlined in California Codle of Regulations, Title 15 September 3378. Furthermore, there are stipulations regarding reviews of sources after September 2004 when the Department and Castillo entered an agreement. You fall under the prospective basis exception, meaning that the original source items used in any validation prior to September 2004 do not fall under the agreement of Castillo. Any source items that were not submitted in your original or subsequent validations shall be viewed by the investigator under the Castillo guidelines. Nevertheless, the validating authority may choose to review all of the submitted sources under the Castillo agreement.

D. T. Hawkes

Correctional Counselor II

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ALIFORNIA DE TMENT OF CORRECTIONS

STATE OF CALIFORNIA CDC 1030 (12/86)

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Gonejo and myself all together the truth will come out. It will show that yes Beto was under the wrolfing in the myself all together the truth will come out. It will show that yes Beto was under the wrolfing in the impression and he ran with it. Gilbert Lopez K86894 is "Beto" of San Diego Armando Molinar D58455 is "Conejo" of Evergreen, Robert Lopez C06986 is "Toto" of Santa Paula. Victor Acuna D33298 is "Terco" of Bassett Grande. The term "yayes" is "llaves," and refers to authorization to conduct EME gaing activities on behalf of the EME.  (If additional space needed, attach another sheet.)  4) Type and current location of documentation, (for example: CDC-128-B of 5-13,86 in the confidential material folder).	"Beto and Carlo are close triends and they work in Auto body, while they told Carlo told Ciego that I was
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behalf of the EME.  (if additional space needed, attach another sheet.)  4) Type and current location of documentation, (for example: CDC-128-B of 5-1/5,86 in the confidential material folder).	Bassett Grande, The term "yayes" is "llaves," and refers to administration, deposition of the term "yayes" is "llaves," and refers to administration, deposition of the term "yayes" is "llaves," and refers to administration of the term "yayes" is "llaves," and refers to administration of the term "yayes" is "llaves," and refers to administration of the term "yayes" is "llaves," and refers to administration of the term "yayes" is "llaves," and refers to administration of the term "yayes" is "llaves," and refers to administration of the term o
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DEPARTMENT OF CORRECTIONS

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	CONFIDENTIAL INFORMATION DISCLOSURE FORM
	ATE NUMBER: C143/65 INMATE NAME: ACLAVA
INMA	#15 laDialocus
1)	Use of Confidential Information.
7	Information received from a confidential source(s) has been considered in the;
	a) CDC-115, Disciplinary Report dated
	STAFF NAME, TITLE
	b) CDC-114-D, Order and Hearing for Placement in Segregated Housing dated
	Bolishillty of Source 1
2)	The identity of the source(s) cannot be disclosed without endangering the source(s) of the security of the institution.
	This information is considered reliable because.
i.	a) This source has previously provided confidential information which has proven to be true.
1	b) This source participated in and successfully completed a Polygraph examination.
į 4	c) More than one source independently provided the earne information.
	e) Part of the information provided by the source(s) has already proven to be true
V.	h) Dither (EXPLAIN)
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3)	Disclosure of information received.
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Case 3:07-cv-05423-VRW Document 16-7 Filed 06/23/2008 Page 42 of 55 DE TMENT OF CORRECTION ALIFORNIA 2/86)

STATE OF CALIFORNIA CDC 1030 (12/86)

1) Use of Confidential Information.  Information received from a confidential source(s) has been considered in the:  a) CDC-115, Disciplinary Report dated  STAFF NAME: TITLE
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STAFF NAME: TITLE
b) CDC-114-D, Order and Hearing for Placement in Segregated Housing dated
2) Reliability of Source.
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The continuity considered reliable herause:
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b) This source participated in and successfully completed a Rolygraph examination.
c) More than one source independently provided the same information.  d) This source incriminated himself/herself in a criminal activity at the time of providing the information.
e) Part of the information provided by the source(s) has already proven to be true
f) ther (Explain)  Letter from EME member "Tudy" Arthur Estrada V26050
3) Disclosure of information received.
In a letter from EME member "Tudy" Arthur Estrada V26050 of Cucamongarto "Spooky" Wella figure
Mendoza W15593 (discharged) [at 2795] wyodawaru siteoti barra migled another individual a little. T
as "the hometown Arcadic." Estrada wrote that Acuna: nay have misled another. "Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada, for the said after this "So really I'm not tripping." Staff, does not appear to be a concern to Estrada and I'm not tripping.
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information identified the misled individual as Dean Salvador Montage and Individual as Lean Salvador Montage and Individual A
and professional and the cheet
(If additional space needed, attach another sheet.)
4) Type and current location of documentation, (for example: CDC-128-B of 5-15-86 in the confidential material
folder).
Confidential Memorandum dated October 3, 2005 in confidential section of & File 1111
Junev2, 2006
D. T. Hawkes, Correctional Contribution of Date Discussion of Discussion

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CDG	1030	(12/86)	,	

INMATE N	UMBER C43165 INMATE NAME: ACUNA, ARGADIO	* ; ;	
1) Use of	Confidential Information	#	
	ormation received from a confidential source(s) has been considered in the	i i	
a)	CDC-115, Disciplinary Report dated	submitted,	by **
	STAFF NAME, TITCE	<u> </u>	
•			
b)	CDC-114-D, Order and Hearing for Placement in Segregated Housing dated	<u> </u>	<del>*</del>
2) Reliabi	dentity of the source(s) cannot be disclosed without endangering the source(s) or the security of	of the institu	tion.
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d) 🗓	More than one source independently providing the This source incriminated himself/herself in a criminal activity at the time of providing the		11 81
	Part of the information provided by the source(s) has already proven to be intelled.		1/2
1) ⊠	Other (Explain)	Prison.	
3) Disclo	Notes confiscated not beat a source of information received.		
	ote, the author (identified as EME associate "Danny Boy" Daniel Sandigo K079	35 of Upl	and)
directs th	bte, the author (identified as FME associate Dailing Boy Daniel State of the recipient: "Anyway get at Gadio and let him know what s/up with this Mato an he recipient: "Anyway get at Gadio and let him know what s/up with this Mato an	d also tell been ider	ntified
Cadio to	he recipient: "Anyway get af Gadiorano let film kilow malat 3,99 "" ("Spanky has make sure that Spanky and Strafid have a safe trip back here." "Spanky has y Duenas P05117.		
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1	STAFF SIGNATURE THE COCENTRAL FILE: GREEN CO. Inmate; YELLOW CO INSTITUTION USE	1 6	

Filed 06/23/2008 Page 44 o Case 3:07-cv-05423-VRW Document 16-7 STATE OF CALIFORNIA CDC 1030 (12/86) CONFIDENTIAL INFORMATION DISCLOSURE FORM INMATE NAME: ACUNA ARCADIO INMATE NUMBER 1) Use of Confidential Information. Information received from a confidential source(s) has been considered in the: submitted by a) CDC-115, Disciplinary Report dated STAFF NAME, TITLE b) GDC-114-D, Order and Hearing for Placement in Segregated Housing dated Reliability of Source: The identity of the source(s) cannot be disclosed without endangering the source(s) or the security of the institution This information is considered reliable because: a) This source has previously provided confidential information which has proven to be true. b) This source participated in and successfully completed a Polygraph examination c) More than one source independently provided the same information. d) This source incriminated himself/herself in a criminal activity at the time of providing e) Part of the information provided by the source(s) has already proven to be true. f) Other (Explain) Address book of EME member "Tuttle" Mank Quiroz C5088 Nof Colton Acuna's name was in the address book of EME member "Turtle" Mark Quirez 598 7 of Collon book contained the names of over 180 EME members and associates. Both Acune's name and CDC were entered: (if additional space needed, attach another sheet.) Type and cultrent logation of courmentation (for example: CDC-128-6 of 5-15-86 in the confidential material

D. T. Hawkes, Correctional Counselor II

June 21 2006 /

DATE DISCLOSED

DISTRIBUTION: WHITE on Central File; GREEN on Infriate: YELLOW on Institution Use

Confidential CDC Farm 1888 dated August 10, 2004 in confidential section of C-File

Document 16-7 STATE OF CALIFORNIA CDC 1030 (12/86) CONFIDENTIAL INFORMATION DISCLOSURE FORM INMATE NAME: CUNA, ARCADIO INMATE NUMBER 1). Use of Confidential Information. Information received from a confidential source(s) has been considered in the: submitted by a) CDC-115, Disciplinary Report dated STAFF NAME, TITLE b) CDC-114-D, Order and Hearing for Placement in Segregated Housing dated Reliability of Source The identity of the source(s) cannot be disclosed without endangering the source(s) or the security of the institution. This information is considered reliable because: a) This source has previously provided confidential information which has proven to be true b) This source participated in and successfully completed a Polygraph examina c) More than one source independently provided the same information d) This sourge incriminated himself/herself in a criminal activity at the time of e) And of the information provided by the source (1) has already proven to be true An EME associate during a debriefing interview, reported that i (if additional space needed, attach another sheet.)

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Case 3:07-cv-05423-VRW

Filed 06/23/2008 Page 46 of 55
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STATE OF CALIFORNIA CDC 1030 (12/86)

## CONFIDENTIAL INFORMATION DISCLOSURE FORM

NMATE NUMBER CARAGE	(NMATE NAME:	ACUNA, ARCA	DIO	<u> </u>
NMATE NUMBER C43165	·			): 1:
1) Use of Confidential Information.	1,		,	
Information received from a confidential source	e(s) has been consi	derèd in the		
a) CDC-115. Disciplinary Report dated			subr	nitted by
	STAFF NAME, TITLE			-
The state of the s	,			1 111
b) CDC-114-D, Order and Hearing for Placer	nent in Segregated	Housing dated	1	
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<ol> <li>Reliability of Source.</li> <li>The identity of the source(s) cannot be disclosed with</li> </ol>	ithout endangering t	ne source(s) of the	ecurity of the	institution.
This information is considered reliable because:		131941111111		, <u>;</u>
This source has areviously provided confic	dential information y	vhich has proven t	be true.	
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This source incriminated himself/herself in	a criminal activity	at the time of Provi	dingthe intori	mation.
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of Other (Evilain)	The state of the s	The state of the s		
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3) Disclosure of information received.				
A self-admitted associate of the EME reported that "Cad	ilo". Acuna was relea	sed from HBS SH	atter getting	his status
A self-admitted associate of the EME reported that "Cad changed to inactive. The source related that Acuna is ve changed to inactive about the distribution of EME members!	ry active, and was a	waiting confirmation geland the fact he t	ad not killed a	nyone for
changed to inactive. The source related that Acuna is ver There were doubts about the granting of EME members the gang. While at CCI, Acuna Was taking care of four or EME members "Terco" Acuna Was taking care of four or EME members "Terco" Acuna was reportedly limit rucling its	five EME members	at PBSP-SHU. Acu	ha was sendin iila D16318-o	ig money to fiGeraghty
EME members "Terco" Acuna Was reportedly instructing the Loma, and "Popeye." Acuna was reportedly instructing the	le inmates about the	EME Acuna repor	tedly targeted	"Solid"
Mark Galvan H91736 of Ananza Tomas Baur, Ille Lange	ALL CARE USE	Ardtection Admaia	haithe other s	ix Pi i i i i
operating for the EME. Acuna's frame was on a list of pe individuals with this protection became known as the M	agnificent Seven." Ti	he note endorsing it	is action was	signed by
ten EME members from PBDM				
(If additional sp	ace needed, attach an	1.1 种业主品 赞致了。)		
4) Type and current location of decumentation, (for	example: CDC-128	-B of 5-15-86 in the	confidential	material
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1)	Information received from a confidential source(s) has been considered in the:	
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	STAFF NAME. TITLE	
	b) CDC-114-P. Order and Hearing for Placement in Segregated Housing dated	
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STAFF NAME, TITLE			
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3) Disclosure of information ecolved.			
A Charles as an EME	190C	iate le l	
This is a debriefing interview with an EME member, who identified Acuna as an EME a knew as "Cadio" of Qucamonga. Acuna is referenced on a list as an EME associated knew as "Cadio" of Qucamonga.	losp	edife ga	ng
knew as "Cadio" of Cucamolities Active to the Cadio			
activity is identified.	7,3		
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4) Type and current location of documentation, (for example, GDC-128-B of 5-15-86) Inflae (19)	e iliai	Milateridis	: }
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D. T. Hawkes, Correctional Counselor II Coun		T. D	
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STAFF NAME, TITLE
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d) Part of the information provided by the source(s) has already proven to be true
Office (Fullett)
3). Disclosure of information received.
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how to communicate in code. Acuna used this code the communicate in code. Acuna used "Dean" Salvador Mendoza to assist in redirecting his letters to avoid starticle ection that
could result in Acuna's return to active status.
(If additional space peeded, attach another sheet.)
- Addition (for all arms) reported by 515,86 in the confidential material
4) Type and current location of documentation, (for example: CDC-128-B of 5715-60111 119-CO1110-81121
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Confidential Memorandum dated August 8, 2002 in confidential section of C-file
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D. T. Hawkes, Conrectional Counselor II
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	d to me	monnant
goes behind the counter (Strike Degar Calling ) this resulted in Smith having safety concerns from Acuna on the yard		
Mis additional space needed, attach another sheet.)		
(6) by simple (CDC-128-B) of 5-15386 https://px	ifidential	material
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Confidential Memorantum dated December 12, 2001 in confidential Memorantum		
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INMATE NAME: ACUAVA	
INMATE NUMBER 473/65 INMATE NAME	
1) Use of Confidential Information.	
Information received from a confidential source(s) has been considered in the	
a) CDC-115, Disciplinary Report dated	submitted by
STAFF NAME, HTLB	
b) CDC-1.14-D. Order and Hearing for Placement in Segregated Housing dated	And the second
2) Reliability of Source.	it the identification
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a) This source has previously provided confidential information which has prevented to	
b) This source participated in and successfully completed a Polygraph examination	
c) More than one source independently provided the same information	
d) This source incriminated himself herself in a criminal activity at the time of providing the	e information.
B) Part of the information provided by the source(s) has already proven to be time.	
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3) Disclosure of information received.	
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STAFF	NAME, TITLE			clyin with
b) CDC-414-D, Order and Hearing for Placement in	Segregated Housing d	ated		10000000000000000000000000000000000000
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Case 3:07-cv-05423-VRW Document 16-7

STATE OF CALIFORNIA
CDC 1030 (12/86)...

CONFIDENTIAL/INFORMATION DIS Filed 06/23/2008

INMATE NUMBER CASTOS I
1) Use of Confidential Information. Information received from a confidential source(s) has been considered in the:
a) CDC-115 Disciplinary Report dated
大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大大
STAFF NAME, TITLE
b) CDC-114-D, Order and Hearing for Placement in Segregated Housing dated:
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This information is considered reliable because:
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D. T. Hawkes, Correctional Counselor II.